SUPREME COURT OF THE UNITED STATES.

No. ~~866~~ 128

LINCOLN CLARK, PLAINTIFF IN ERROR,

vs.

JOHN P. KERR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 208.

LINCOLN CLARK, PLAINTIFF IN ERROR,

vs.

JOHN P. KERR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Stipulation	2	1
Summons of return	3	1
Declaration	5	2
Order leave to marshal to amend return	9	3
Plea	9	3
Order leave to file additional pleas	10	4
Replication to plea	15	5
Order submitting cause to court	19	7
Order vacating submission	19	7
Amended declaration	20	7
Demurrer to amended declaration	23	8
Order on hearing of demurrer	24	8
Order overruling demurrer	25	9
Demurrer to replication	26	9
Order on hearing demurrer	27	9
Order and judgment	27	9
Exceptions	29	10
Appeal bond	40	14
Citation	42	15
Certificate of clerk	44	15
Writ of error	45	15
Assignment of errors	47	16

1 Pleas in the circuit court of the United States of America for the eighth circuit and northern district of Illinois, before the judges thereof, at the city of Chicago, in the district aforesaid, on Tuesday, the tenth day of November, in the October adjourned term of said court, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JOHN P. KERR
vs.
LINCOLN CLARK. } In debt.

Be it remembered, that on the thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, came said plaintiff by his attorney, and filed in the office of the clerk of the circuit court of
2 the United States of America for the northern district of Illinois, at Chicago, in said district, his præcipe, praying the issue of a writ of summons against said defendant in a plea of debt four thousand dollars, damages four thousand dollars, returnable on the first Monday of March in the March adjourned term of said court, A. D. 1863, and also at the same time filed his bond for costs in said entitled cause, which said bond for costs is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the northern district of Illinois.

JOHN P. KERR
vs.
LINCOLN CLARK. } Debt.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that ex-
3 ecution may issue against my property for any costs taxed against him.

Dated this 12th day of February, A. D. 1863.

GEO. SPRING.

Endorsed: Filed Feb'y 13th, 1863.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the thirteenth day of February, A. D. 1863, a writ of summons was issued out of said clerk's office against said defendant in said plea, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Circuit court of the United States of America, northern district of Illinois.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon Lincoln Clark, if he shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the next term
4 thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto John P. Kerr in a plea

of debt for four thousand dollars, and for the detention of said debt to his damage, as he alleges, of four thousand dollars, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 13th day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the 87th year.

[SEAL.]

WM. H. BRADLEY, *Clerk.*

[50-cent stamp.]

The within-named Lincoln Clark, having on this 16th day of February, A. D. 1863, read the within writ, accepted service thereof.

J. R. JONES, *U. S. Marshal,*
By GEO. L. WEBB, *Deputy.*

The foregoing return amended by leave of court, substituting the word "February" for that of "December," erased.
March 4, 1863.

J. R. JONES, *U. S. Marshal,*
By GEO. L. WEBB, *Deputy.*

Endorsed: Filed March 2d, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

5 On this day, to wit, the second day of March, A. D. 1863, came said plaintiff by his attorney, and filed in said clerk's office his declaration against said defendant, which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the northern district of Illinois, of March term in the year of our Lord eighteen hundred and sixty-three.

JOHN P. KERR
vs. } Debt.
LINCOLN CLARK.

The plaintiff, John P. Kerr, of the city of Dubuque, in the county of Dubuque and State of Iowa, and a citizen of said State of Iowa, by his attorney, J. H. Knowlton, comes into this court and complains of the defendant, Lincoln Clark, of the city of Chicago, in the county of Cook and State of Illinois, within the district aforesaid, and a citizen of said State of Illinois, who was summoned to answer unto the said plaintiff in a plea that he render unto the said John P. Kerr,
6 plaintiff, the sum of four thousand dollars, lawful money of the United States of America, which he owes to and unjustly detains from him, the said plaintiff; for that whereas the said plaintiff heretofore, to wit, at a term of the district court of Iowa, in and for the aforesaid county of Dubuque, held in the month of November, in the year of our Lord eighteen hundred and sixty, at the court-house, at said Dubuque County, to wit, within the district aforesaid, before the judge of said district court, and on the twenty-third day of November, in the year last aforesaid, by the consideration and judgment of the said court, recovered against the said defendant, Lincoln Clark, the sum of three thousand two hundred and forty-two dollars and twenty-three cents, parcel of the said sum of money above demanded, which in and by the said court were then and there adjudged to the said John P. Kerr, plaintiff, for his damages which he had sustained, as well by reason

of the non-performance by the said defendant of certain promises and undertakings then lately made by the said defendant, Lincoln Clark, to the
7 said plaintiff, and for divers sums of money then due to the said plaintiff from the said defendant, as for costs and charges of the said plaintiff by him about his said suit and proceedings in that behalf expended, whereof the said defendent was convicted, as by the record and proceedings thereof more fully and at large appears. And the said plaintiff in fact saith that in and by the said court there was also adjudged to the said plaintiff six per cent. interest upon the same so as aforesaid adjudged to him for his said damages, to wit, the sum of three thousand two hundred and thirty-seven dollars and forty-eight cents, from the date of the rendition of the said judgment until paid, which by the said record and proceedings thereof more fully and at large appears. And the said plaintiff further in fact saith that said judgment for damages, costs, and interest was so as aforesaid rendered upon the personal appearance of the said Lincoln Clark, which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated; and the said plaintiff hath not obtained any execution or satisfaction of or upon the said judgment so recovered as aforesaid,
8 whereby an action hath accrued to the plaintiff to demand and have of and from the said Lincoln Clark, defendant, the said sum of three thousand two hundred and forty-two dollars and twenty-three cents and the said six per cent. interest so adjudged to him as aforesaid, parcel of the said sum above demanded.

Nevertheless, the said defendant, although often requested so to do, hath not as yet paid the said sum above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused, and still neglects and refuses, so to do, to the damage of the said plaintiff of four thousand dollars, and therefore he brings his suit, &c.

J. H. KNOWLTON, *Att'y for Plaintiff.*

Endorsed: Filed March 2d, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fourth day of March, in the March adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

9 JOHN P. KERR
vs.
LINCOLN CLARK. } Debt.

Now comes the plaintiff by his attorney, and on motion leave is given the marshal to amend the return made on the process issued herein in accordance with the facts.

On this day, to wit, the fifth day of March, A. D. 1863, came the said defendant, Lincoln Clark, in person, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Circuit court U. States, northern dist. Illinois, October term, A. D. 1863.

LINCOLN CLARK
ads.
JOHN P. KERR.

And the said defendant by himself comes and defends the wrong and injury, when, &c., and says that there is not any record of the said supposed recovery in the said declaration mentioned remaining in the said district court of Dubuque County, in the State of Iowa, in manner and form as the

said plaintiff hath above in his said declaration alleged, and this the
10 said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant.

LINCOLN CLARK, *Defend't.*

Endorsed: Filed March 5, 1863.

WM. H. BRADLEY, *Cl'k.*

Refiled Nov. 7th, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twenty-fifth day of March, in the March adjourned term of said court, A. D. 1863, in the record of the proceedings thereof, in said entitled cause is the following entry, to wit:

JOHN P. KERR
v. } Debt.
LINCOLN CLARK.

On motion of the defendant by Hayne, Miller & Lewis, his attorneys, leave is given him by the court to file additional pleas herein.

On this day, to wit, the twenty-fifth day of March, A. D. 1863, came said defendant by his attorneys, and filed in said clerk's office his addi-
11 tional pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

2d pleas.

In the cir. court U. States, northern dist. of Ill., October term, 1863.

LINCOLN CLARK
ads. }
JOHN P. KERR.

Comes the defendant, the said Lincoln Clark, by Hayne, Miller & Lewis, his attorneys, and by leave of the court first had says that the plaintiff, the said John P. Kerr, ought not further to have and maintain his aforesaid action against him, because, he says, that at the time the said supposed judgment in the plaintiff's declaration mentioned was rendered, there was no suit pending in the district court of Dubuque County, in the State of Iowa, in behalf of the said plaintiff against the said defendant, neither did said defendant agree in open court, nor in writing filed with the clerk of said court, that judgment might be rendered against him for the sum mentioned in the plaintiff's declaration, or other sum in any suit then pending in said court, or in any suit whatever wherein the said John P. Kerr was plaintiff,
12 and the said Lincoln Clark was defendant. Nor was the defendant ever summoned or notified in any manner whatever in said supposed suit in plaintiff's declaration mentioned; neither did he appear in said supposed suit, either in person or by attorney; neither did the defendant ever appear before the clerk of said district court, and confess a judgment in favor of said plaintiff for the sum mentioned in his declaration, or other sum. Neither was any judgment confessed or supposed to be confessed before said clerk by said defendant for and in behalf of said plaintiff ever read in open court, and approved and signed by said court. Neither did said defendant in any manner whatsoever confess any judgment in favor of said plaintiff, and this he prays may be enquired of by the court.

LINCOLN CLARK, *Defend't.*

HAYNE, MILLER & LEWIS, *Atty's.*

13 *3d pleas.*

In the cir. co. U. States, northern dist. Ill., March term, 1863.

LINCOLN CLARK }
ads. }
JOHN P. KERR. }

Comes the defendant, the said Lincoln Clark, by his att'ys aforesaid, and by leave of the court says that the plaintiff, the said John P. Kerr, ought not further to have and maintain his aforesaid suit against him because, he says, (protesting that no judgment was rendered against him by the district court of Dubuque County, in the State of Iowa,) that at the time the said supposed judgment was rendered there was no suit pending against him, this defendant, by and in behalf of the said plaintiff. Neither did said defendant agree in open court, nor in writing filed with the clerk of said court, that a judgment should be rendered against him for the said sum of $3,237 48 in the plaintiff's declaration mentioned, nor for any other sum, nor for any judgment whatsoever, and this he prays many be enquired of, &c.

4th. And for further plea in this behalf by leave, &c., the said de-
14 fendant says that the plaintiff ought not further to have and maintain his said suit further against him, because he says that he was never summoned or notified in any manner whatsoever to appear in said suit in the plaintiff's declaration mentioned, nor in any other suit in the district court of Dubuque County, in the State of Iowa, by and in behalf of the said plaintiff against the said defendant; neither did he appear in person or by att'y, and this he prays may be enquired of, &c.

5th. And for further plea in this behalf, by leave, the defendant says that the said plaintiff ought not further to have and maintain his said suit further against him, because he says that he never appeared before the clerk of the district court of Dubuque County, in the State of Iowa, to confess judgment in behalf of the said plaintiff; neither was judgment confessed in such case; neither was any judgment confessed or supposed to be confessed by said defendant before said clerk, to, for, and in behalf of said plaintiff, ever
15 read in open court, and approved and signed by said court, and this he prays may be enquired of, &c.

LINCOLN CLARK, *Defend't.*
HOYNE, MILLER & LEWIS, *Att'y.*

Endorsed: Filed March 25th, 1863.

WM. H. BRADLEY, *Cl'k.*

Refiled Nov. 7th, 1863.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the twenty-fifth day of March, A. D. 1863, came said plaintiff, by his attorney, and filed in said clerk's office his replication in *in* said entitled cause, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circut court of the United States for the northern district of Illinois.

JOHN P. KERR }
vs. } Debt on judgment.
LINCOLN CLARK. }

And the said plaintiff, as to the said plea of the said defendant,
16 by him first above pleaded, says that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be

barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he says that there is such a record of the said recovery remaining in the district court of the county of Dubuque, in the State of Iowa, before the judge thereof, as he, the said plaintiff, hath above in his said declaration in that behalf alleged, and this the said plaintiff prays may be inquired of by the country; and he also prays judgment for his said debt and damages as in and by his said declaration he hath already prayed. And the said defendant doth the like.

J. H. KNOWLTON, *Plff's Att'y.*

Endorsed: Filed March 25th, 1863.

WM. H. BRADLEY, *Cl'k.*

Refiled Nov. 7th, 1863.

WM. H. BRADLEY, *Cl'k.*

Afterwards, to wit, on the eighteenth day of May, A. D. 1863,
17 came said plaintiff, by his attorney, and filed further replications in said entitled cause, which said replications are in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the northern district of Illinois, May term, 1863.

JOHN P. KERR
vs. } Debt on judgment.
LINCOLN CLARK.

And now comes the said plaintiff, by his attorney aforesaid, and says that he ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant by reason of anything contained in the pleas of the said defendant, by him secondly, thirdly, fourthly, and fifthly, above pleaded, because, he says, that the said judgment in the said declaration of the said plaintiff mentioned was confessed by the said Lincoln Clark upon a written statement signed by him particularly specifying the facts out of which his indebtedness to the said plaintiff arose, and of the amount then justly due to the said plaintiff, and to the truth of which the
18 said Lincoln Clark made affidavit, and upon which, upon filing of the same, as was the duty of the clerk of the district court of the county of Dubuque, in the State of Iowa, he, the said clerk, entered judgment of record in said last-named court in favor of the said plaintiff and against the said defendant for the sum so aforesaid confessed by him for the damages of said plaintiff, and no more, and for the costs of the said plaintiff, as is in his said declaration stated, and as is by the statutes of the said State of Iowa provided and required. And this he, the said plaintiff, prays may be enquired of by the country, &c.

J. H. KNOWLTON,
Att'y for Plaintiff.

Endorsed: Filed May 18, 1863.

WM. H. BRADLEY, *Cl'k.*

Refiled Nov. 7th, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twenty ninth day of May, in the May adjourned

term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

19 JOHN P. KERR
v.
LINCOLN CLARK. } Debt.

Now came the parties, by their attorneys, and upon issue joined by agreement, they waive the intervention of a jury, and for trial put themselves upon the court, and after progressing in the trial of the cause until the hour of adjournment having arrived the further hearing is postponed until tomorrow morning.

On this day, to wit, the fifteenth day of June, in the May adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOHN P. KERR
v.
LINCOLN CLARK. } Debt.

The order heretofore made in this cause waiving a jury and submitting the same to the court is vacated and set aside and leave given the plaintiff to amend his declaration.

20 On this day, to wit, the twenty-fourth day of June, A. D. 1863, came said plaintiff, by his attorney, and filed in said clerk's office his amended declaration in said entitled cause, which said amended declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the northern district of Illinois.

JOHN P. KERR
vs.
LINCOLN CLARK. } Debt.

The plaintiff, John P. Kerr, of the city of Dubuque, in the county Dubuque, and State of Iowa, and a citizen of said State of Iowa, by J. H. Knowlton, his attorney, comes into this court and complains of the defendant, Lincoln Clark, of the city of Chicago, in the county of Cook, and State of Illinois, and a citizen of the said State of Illinois, who was summoned in a plea that he render to the said plaintiff the sum of four thousand dollars, lawful money of the United States, which he owes to and unjustly detains from him,
21 all which the said plaintiff doth by way of amendment, leave of the court being first had and obtained for that purpose; for that, whereas the said plaintiff heretofore, to wit, on the twenty-third day of November, in the year of our Lord eighteen hundred and sixty, by the consideration and judgment of the district court of and for the county of Dubuque, in the State of Iowa, the same being a superior court and a court of record, possessed of competent power and authority in the said premises, to wit, at the district aforesaid, recovered against the said defendant, Lincoln Clark, the sum of three thousand two hundred and thirty-seven dollars and forty-eight cents, parcel of the sum above demanded, and six per cent. interest from the day and year last aforesaid, which sum of three thousand two hundred and thirty-seven dollars and forty-eight cents was then and there adjudged to the said plaintiff for his damages, and also the further sum of four dollars and seventy-five cents for his costs and charges by him, the said plaintiff, expended

22 in that behalf, making in all the sum of three thousand two hundred forty-two dollars and twenty-three cents. Whereof the said defendant was convicted as by the record and proceedings thereof remaining in the said court, before the judge thereof, more fully appears, and which judgment was as aforesaid recovered and rendered on the personal written confession of the said defendant, Lincoln Clark, which said judgment remains in full force and effect, not reversed, satisfied, or otherwise vacated; and the said plaintiff hath not obtained any execution or satisfaction of or upon the said judgment so recovered as aforesaid, whereby an action hath accrued to the plaintiff to demand and have of and from the said defendant the said sum of three thousand two hundred forty-two dollars and twenty-three cents, parcel of the sum above demanded, as also the six per cent. interest so as aforesaid adjudged to the said plaintiff. Nevertheless, the said defendant (although often requested so to do) hath not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but
23 hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the said plaintiff of four thousand dollars, and therefore he brings suit, &c.

J. H. KNOWLTON,
Att'y for Plaintiff.

Endorsed: Filed June 24th, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the thirteenth day of July, A. D. 1863, came said defendant, by his attorneys, and filed in said clerk's office his demurrer to said amended declaration, which said demurrer is in the words and figures following, to wit:

In the c't court of the United States, northern dist. of Illinois, July term, A. D. 1863.

LINCOLN CLARK } *ads.* JOHN P. KERR.

And the said defendant, by Hoyne, Miller & Lewis, his att'ys, comes and defends the wrong and injury, when, &c., and says that the said amended declaration and the matters therein contained, in manner and form
24 as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same; and this he is ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defend't prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him

HOYNE, MILLER & LEWIS,
Att'ys for Defend't.

Endorsed: Filed July 13th, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fourth day of November, in the October adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOHN P. KERR } *v.* LINCOLN CLARK. } Debt.

25 Now comes on to be heard the demurrer of the defendant to the amended declaration. After argument the court takes time to consider of the same.

On this day, to wit, the sixth day of November in the October adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOHN P. KERR
v. } Debt.
LINCOLN CLARK.

The court having considered and being now fully advised in the demurrer of the defendant to the amended declaration, overrules the same and thereupon leave is given the defendant to withdraw the demurrer and plead, and the defendant is ruled to file his plea by to-morrow morning.

On this day, to wit, the seventh day of November, A. D. 1863, came said defendant, by his attorneys, and filed in said clerk's office his demurrer to plaintiff's replication, refiled on the 7th November, 1863, to second, third, fourth, and fifth pleas; which said demurrer is in the words and figures following, to wit:

26 Cir. c't U. States for the northern dist. of Ill., Oct. term, 1863.

LINCOLN CLARK
ads. }
JOHN P. KERR.

And the said defend't saith that the replication of the said pl't'f to the said second, third, fourth, and fifth pleas of the defend't and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defend't, and that he, the said defend't, is not bound by law to answer the same, and this the said defend't is ready to verify. Wherefore by reason of the insufficiency of the said replication in this behalf, the said defend't prays judg't if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

HAYNE, MILLER & LEWIS,
Att'ys for Defend't.

Endorsed: Filed Nov. 7th, 1863.

WM. H. BRADLEY, *Cl'k.*

27 On this day, to wit, the ninth day of November in the October adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOHN P. KERR
v. } Debt.
LINCOLN CLARK.

Now comes on to be heard the demurrer of the defendant to plaintiff's replication to the second, third, fourth, and fifth pleas, which, after argument of counsel, the court takes under advisement.

On this day, to wit, the tenth day of November in the October adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOHN P. KERR
v. } Debt.
LINCOLN CLARK.

Now come the parties by their attorneys, and the court having considered and being fully advised on the demurrer of the defendant to the plaintiff's

replication to the second, third, fourth, and fifth pleas, refiled November 7th, 1863, the court carries the demurrer back to the pleas and finds that the said pleas are insufficient in law, and the defendant elects to abide by
28 his demurrer, and upon issue joined now come a jury of good and lawful men, to wit: A. T. Sherman, J. Y. Cutler, W. L. Felton, L. K. Osborn, D. B. Murehouse, George W. Bently, A. H. Holden, M. McGuire, John K. Eddows, David S. McLane, John G. Mitchell, and N. L. Stow, who are all duly elected, tried, and sworn to well and truly try said issue, after hearing the evidence and the instructions of the court, return into court the following verdict: We the jury, find and report the plaintiff's debt to the sum of three thousand two hundred and forty-two dollars and twenty-three cents, and we assess the damages for the detention of said debt to the sum of five hundred and seventy-six dollars and fifty-eight cents, making in all debt and damages the sum of three thousand eight hundred and eighteen dollars and eighty-one cents.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the said defendant the said sum of three thousand two hundred and forty-two dollars and twenty-three cents in debt, together with the sum of five hundred and seventy-six dollars and
29 fifty-eight cents damages, making altogether debt and damages the sum of three thousand eight hundred and eighteen dollars and eighty-one cents, together with the costs, and charges herein, amounting to the sum of forty dollars and forty-five cents, and that execution issue therefor.

On the trial of the foregoing cause the defendant took the following exceptions, which were duly signed and sealed by the judge of said court; which said exceptions are in the words and figures following, to wit:

Circuit court United States, northern district, Illinois, October term, 1863.

JOHN P. KERR
vs.
LINCOLN CLARK.

Be it remembered, that on the trial of this cause upon the issue made and taken upon the defendants plea of *nul tiel record* the plaintiff in support of his action offered to read to the jury a paper writing purporting to be a transcript from the records of the district court of Dubuque County,
30 in the State of Iowa; which paper writing is in words and figures following, to wit:

Confession of judgment.

District court, Dubuque County, Friday, November 23d, A. D. 1860.

JOHN P. KERR
vs.
LINCOLN CLARK.

Judgment is hereby confessed by said defendant, Lincoln Clark, in favor of said John P. Kerr, plaintiff, for the sum of three thousand two hundred and thirty-seven dollars and forty-eight cents, which said sum of money is now justly due from said Lincoln Clark to said John P. Kerr. The facts out of which said indebtedness arose are as follows: On the 1st day of March, 1857, said Kerr loaned and advanced to said Clark the sum of fifteen hundred and eight dollars and fifty-six cents for one year, in consideration of three hundred and one dollars and seventy-one cents to be paid said Kerr as interest on the same, and that at the expiration of said one year the said Kerr loaned said Clark said principal and said interest then due until the

8th day of April, 1859, in consideration of the sum of four hundred
31 and twenty-two dollars and thirty-three cents, to be paid as interest for the use of same, whereby on the 8th day of April, 1859, said Clark was indebted to said Kerr for the principal and interest loaned in the manner and at the times aforesaid in the sum of $2,232 60. And said Kerr on the 31st day of Aug., 1855, gave said Clark one thousand dollars with which to purchase and locate land in Iowa for him, the said Kerr, and the said Kerr on the 1st day of Sept., 1855, gave said Clark two thousand dollars with which to purchase and locate land for him in Iowa, and on the 1st day of October, 1855, said Kerr gave said Clark two thousand dollars more with which to purchase and locate land as aforesaid, and on the 24th day of October, 1855, said Kerr gave said Clark five thousand dollars with which to purchase and locate land as aforesaid, and on the 29th day of October, 1855, said Kerr gave said Clark seven hundred and seventy five dollars and forty-seven cents, with which to purchase and locate land as aforesaid, making in all ten thousand seven hundred and seventy-five dollars and forty-seven cents advanced by said Kerr, at said times, to said Clark for the purpose of locating and purchasing lands for said Kerr by said Clark
32 in the State of Iowa. The manner in which said Clark invested said ten thousand seven hundred and seventy-five dollars and forty-seven cents and the fees charged said Kerr by him for services in locating land and in investing said last-mentioned sum of money, the No. of the warrants bought, No. acres, price of warrant, and the total costs of land and services, will more fully appear by the copy of Clark's account against Kerr, and from said account appears the balance left in the hands of said Clark of said money of said Kerr ; which said account or schedule is as follows :

No. warrant.	Acres.	Price warrant.	Excess.	Fees.	Total.
3119	189.87	$179 20	$37 30	$4 00	$216 50
7328	160.00	179 20	.....	4 00	183 20
7238	189.23	179 20	36 53	4 00	219 73
16739	.....	130 80	.....	3 00	133 80
6201	160.00	181 60	.....	4 00	185 60
7125	160.00	184 00	.....	4 00	188 00
8268	189.81	184 00	37 26	4 00	225 26
8265	160.00	184 00	.....	4 00	188 00
8267	160.00	184 00	.....	4 00	188 00
19774	168.00	135 60	60 98	3 00	199 58
5174	192.36	184 00	40 45	4 00	228 45
2898	189.11	179 10	36 38	4 00	219 48
27343	120.00	134 40	.....	3 00	137 40
24744	120.00	132 00	.....	3 00	135 00
45550	120.00	122 40	.....	3 00	125 40
6201	80.00	90 00	.....	2 00	92 00
11271	120.00	132 00	.....	3 00	135 00
28236	120.00	132 00	.....	3 00	135 00
2193	120.00	132 00	.....	3 00	135 00
7285	160.00	179 30	.....	4 00	183 30
26194	120.00	132 00	.....	3 00	135 00
23580	120.00	132 00	.....	3 00	135 00
23415	120.00	132 00	.....	3 00	135 00
17239	120.00	132 00	.....	3 00	135 00
16156	120.00	132 00	.....	3 00	135 00
15811	120.00	132 00	.....	3 00	135 00

No. warrant.	Acres.	Price warrant.	Excess.	Fees.	Total.
13240	120.00	$132 00	.....	$3 00	$135 00
24063	120.00	132 00	.....	3 00	135 00
24242	120.00	132 00	.....	3 00	135 00
25198	120.00	132 00	.....	3 00	135 00
25490	120.00	132 00	.....	3 00	135 00
25947	120.00	132 00	.....	3 00	135 00
26666	120.00	132 00	.....	3 00	135 00
29597	120.00	132 00	.....	3 00	135 00
29197	120.00	132 00	.....	3 00	135 00
26879	120.00	132 00	.....	3 00	135 00
44021	112.06	90 40	$40 06	2 00	132 46
8802	40.00	44 00	.....	1 00	45 00
11961	80.00	88 00	.....	2 00	90 00
34505	120.00	114 00	.....	3 00	117 00
45292	120.00	123 40	.....	3 00	126 40
39602	120.00	123 40	.....	3 00	126 40
12372	161.00	171 20	.....	4 00	175 20
44583	120.00	123 40	.....	3 00	126 40
13021	160.00	171 20	.....	4 00	175 20
13878	160.00	171 20	.....	4 00	175 20
43428	120.00	123 40	.....	3 00	126 40
52450	120.00	126 00	.....	3 00	129 00
39695	120.00	126 00	.....	3 00	129 00
55183	120.00	126 00	.....	3 00	129 00
19710	120.00	126 00	.....	3 00	129 00
38288	120.00	126 00	.....	3 00	129 00
52449	120.00	126 00	.....	3 00	129 00
52931	120.00	126 00	.....	3 00	129 00
17169	120.00	126 00	.....	3 00	129 00
43433	120.00	126 00	.....	3 00	129 00
11019	120.00	126 00	.....	3 00	129 00
56171	120.00	126 00	.....	3 00	129 00
				928 80	8,448 36

The total amount of fees, $928 80, added to the total amount of money invested, $8,448 36, is equal to $9,377 16, which being deducted from the amount given Clark by said Kerr to invest for him, $10,775 47, is equal $1,398 31. Deducting from this last amount $121, which Kerr allowed to Clark for taxes and compensation to agent, the balance left in Clark's
35 hands of Kerr's money amounted to $1,277 31, which balance was ascertained on the 25th day of May, 1857, and said Clark allowed said Kerr interest on said balance from the 29th day of October, 1855, until the said 25th day of May, 1857, which interest amounted to $383 19, making the amount due Kerr for said balance and interest on the 25th May, 1857, $1,660 50.

In the month of May, 1856, Kerr gave Clark 1,466 99-100 dollars, and shortly afterwards gave him a draft for 500 dollars, and about the same time one Logan paid Clark on Kerr's account 500, which said three last sums Clark was authorized to invest for Kerr. He accordingly bought a lot from one R. Bonson for Kerr, paying therefor 967 77-100 dollars, he bought for Kerr

two lots from one R. Cox, paying him therefor 875 dollars, and he paid one Logan for Kerr the sum of 500 dollars, which left a balance due to Kerr from Clark of 123 72-100 dollars, which said balance was ascertained May 25, 1857, and which being added to the aforesaid balance of 1,660 50-100 dollars is 1,784 42-100 dollars, to which said Clark added 178 42-100 dollars interest for six months, and executed to said Kerr his note, payable on the 28th day of December, 1857, for 1,962 64-100
36 dollars.

On the 30th day of December, 1857, Clark gave Kerr the note of one Thos. Wood, for which Kerr credited Clark on his said note for 1,100 dollars, leaving balance due on said note 862 64-100 dollars on the 30th Dec., 1857. Clark paid Kerr on said note 160 dollars, adding 136 25-100 dollars as interest to said balance of $862 64-100 for six months, and deducting said $160 which was paid Clark, gave Kerr a new note, cancelling the old one, for 838 89-100 dollars, payable on the 2d day of July, 1858, and afterwards said Kerr and said Clark accounted together, and said Kerr returned to said Clark said Thos. Wood's note, with a balance due thereon of 750 dollars, which was added to the said sum of 838 89-100 dollars due on said last note, and adding also the sum of 139 50-100 dollars as interest from July 2d, 1857, to May 2d, 1859, on said 838 89-100 dollars, makes the amount of that indebtedness on 2d May, 1859, to be 1,728 39-100 dollars, and adding thereto the sum of 2,232 60-100 dollars, the indebtedness arising from a loan by said Kerr to said Clark of 1,508 56-100 dollars, the facts of which
37 are set forth on the first page of this confession, shows the indebtedness of said Clark to said Kerr on the second day of May, 1859, to be 3,960 99-100, at or about which time Clark paid Kerr 1,000 dollars, which deducted, leaves the said indebtedness to be 2,960 99-100 dollars and adding thereto 276 49-100 dollars interest from 2d day of May, 1859, until 20th day of November, 1860, is the sum of 3,237 48-100 dollars, the amount for which this judgment is confessed.

It is further agreed that this judgment draw interest at the rate of six per cent. per annum from the date of same, and the clerk of the district court is hereby authorized to enter said judgment for 3,237 48-100 and six per cent. from date of judgment, the said sum being justly due and owing from said Clark to said Kerr.

The foregoing is a concise statement of the facts out of which said indebtedness arose.

LINCOLN CLARK

November 20, 1860.

Sworn to and subscribed before me by Lincoln Clark this 23d day of November, A. D. 1860.

Witness my hand and notarial seal.

[SEAL.] MYRON H. BEACH, *N. P.*

38 It is thereupon considered and adjudged by the court that plaintiff, John P. Kerr, have and recover of defendant, judgment for said sum of three thousand two hundred and thirty-seven 48-100 dollars (3,237 48-100) and 6 per cent. interest from date until paid, also costs of suit, taxed at 4 75-100 dollars, and that execution issue therefor.

THE STATE OF IOWA, *Dubuque County, ss:*

I, J. F. Bates, clerk of the district court of Iowa in and for said county, do hereby certify that the foregoing is a full, true, correct, and compared copy and transcript of the record, and all of it, in the foregoing entitled cause, in which John P. Kerr is plaintiff and Lincoln Clark is defendant, as fully as the same remains of record in my office.

In testimony whereof, witness my hand and the seal of said court hereunto affixed, at office, in the city of Dubuque, this 6th day of March, A. D. 1863.

J. F. BATES,

[SEAL.] *Clerk of the District Court of Dubuque County, Iowa.*

39 THE STATE OF IOWA, *Dubuque County, ss:*

I, James Burb, sole judge of the district court of Iowa, for the ninth judicial district of said State, of which Dubuque County composes a part, do hereby certify that the foregoing attestation, signed J. F. Bates, clerk, by his genuine signature, is in due form of law.

In testimony whereof, witness my hand, at Dubuque, Iowa, this 6th day of March, A. D. 1863.

JAMES BURB,

Judge 9th Judicial District, Iowa.

[Ten cent stamp.]

To the reading of which the defendant then and there objected, which objection was by the court overruled, and the defendant excepted, and the said paper writing was read to the jury as evidence in the cause. The foregoing was all the testimony offered; and thereupon the defendant tendered this his bill of exceptions, which he prays may be signed, sealed, and made a part of the record.

40 [SEAL.] THOMAS DRUMMOND.

Endorsed: Filed Nov. 16th, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twenty-third day of November, A. D. 1863, came said plaintiff, and filed his bond in said entitled cause, which said bond is in the words and figures following, to wit:

In error to the circuit court of the United States for northern district of Illinois, of the October term, A. D. 1863.

LINCOLN CLARK } *vs.* JOHN P. KERR.

Know all men by these presents that we, Lincoln Clark and George M. Wheeler, of Chicago, in the northern district of Illinois, are held and firmly bound with the above-named plaintiff below, (defendant here,) to wit, the said John P. Kerr, in the sum of five hundred dollars, to be paid to the said John P. Kerr and to his executors or administrators, to which payment, well and truly to be made, we bind ourselves, our executors, and ad-

41 ministrators firmly by these presents. Sealed with our seals, and dated this sixteenth day of November, A. D. 1863. Provided, however, and this obligation is upon this express condition, that whereas the above-named Lincoln Clark has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by said circuit court in the above-entitled cause in favor of John P. Kerr:

Now, therefore, the condition of this obligation is such that if the above-named Lincoln Clark shall prosecute his said writ of error to effect, and shall pay all costs if he shall fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and virtue.

LINCOLN CLARK. [SEAL.]
G. M. WHEELER. [SEAL.]

Approved.

THOMAS DRUMMOND.

Endorsed: Filed Nov. 23d, 1863.

WM. H. BRADLEY, *Clk.*

42 On this day, to wit, the twenty-seventh day of November, A. D. 1863, a writ of citation was filed, which said citation and acknowledgment of service endorsed thereon are in the words and figures following, to wit:

United States of America to John P. Kerr, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Lincoln Clark is plaintiff and you, the said John P. Kerr, are defendant in error, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the judges of said court, this 16th day of November, A. D. 1863.

43 THOMAS DRUMMOND.

I acknowledge service of the within citation.

JAMES KNOWLTON,
Att'y for Def't in error.

November 16th, A. D. 1863.

Endorsed: Filed Nov. 27th, 1863.

WM. H. BRADLEY, *Cl'k.*

44 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record and proceedings had in the cause wherein John P. Kerr was plaintiff and Lincoln Clark was defendant, as the same appears from the records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in Chicago, this 3d day of December, A. D. 1863, and of our independence the 88th year.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

45 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between John P. Kerr and against Lincoln Clark, a manifest error hath happened to the great damage of the said Lincoln Clark, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the

46 said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this fourteenth day of November, in the year of our Lord eighteen hundred and sixty-three, and of our independence the eighty-eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

47 LINCOLN CLARK, pl'ff,
vs.
JOHN P. KERR, defend't in error.

In the Supreme Court of the United States, December term, A. D. 1863, comes the plaintiff, the said Lincoln Clark, by his attorney, and says that in the record, proceedings, and judgment of the court below there is error in this, to wit:

1. The court erred in overruling the defendant's demurrer to the plaintiff's replication to the defendant's second, third, fourth, and fifth pleas.

2. The court erred in overruling the defendant's objection to the introduction of the transcript of record from the district court of Dubuque County, in the State of Iowa, and permitting the same to be read as evidence to the jury.

LINCOLN CLARK, *Att'y pro, &c.*

Filed January 8, 1864.